**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL**
Writ Petition No. 199 of 2004 (S/S)

Pawan Prashad Thapliyal
S/o Late Sri Satya Prasad Thapliyal
R/o Village Baunla
P.O. Santi Sadan (Chatwapipal)
Via Gauchar, District – Chamoli ……Petitioner

Versus

1. Senior Superintendent of Police, Nainital
2. Inspector General of Uttaranchal Police (Karmik), Dehradun
3. State of Uttaranchal through it Principal Secretary of Home, Dehradun … Respondents

Sri M.S. Chauhan, learned counsel for the petitioner.
Sri Paresh Tripathi, learned Standing Counsel for the respondents.

**Hon'ble B.C. Kandpal, J.**

By way of this Writ Petition, the petitioner has sought for relief in the nature of certiorari quashing the order dated 19.01.2004 passed by the respondent no. 1 which has been filed as annexure 9 to this writ petition. A relief has also been sought for issuing the direction in the nature of mandamus directing the respondent no. 2 to consider the case of the petitioner in the light of proviso 5 (1) Dying in Harness Rules of State of Uttaranchal 2002 which has been annexed as annexure 8 to this writ petition.

Brief facts giving rise to this writ petition are that the father of petitioner was constable in Uttar Pradesh Police and he died while fighting against the anti social elements on 25.06.1982. At the time of the death of the father of the petitioner, he was 47 days infant.

The petitioner after attaining the age of majority applied for the appointment under the compassionate ground through representation before the Senior Superintendent of Police, Nainital on 09.05.2000 for the post of the A.S.I. (M). As per the petition, the Senior Superintendent of Police forwarded the representation of the petitioner to the Police Headquarters and he was subsequently came to know that he had to appear

before the Chief Medical Officer for medical examination. The petitioner got this intimation through the letter dated 17.07.2000 issued by the S.S.P., Nainital. The medical examination of the petitioner was conducted and he was found fit.

The petitioner has further averred that he subsequently received a letter from Police Headquarter, Allahabad on 18.04.2001 that he had to submit some documents and he in compliance of that letter submitted the requisite documents. Thereafter, the petitioner came to know that his case has been sent to Government for approval pertaining to relaxation of the time limit, being special case.

It has been averred that the case of the petitioner was recommended by the Inspector General of Uttaranchal Police (Karmik) to Principal Secretary of Home Uttaranchal Government vide letter dated 24.01.2001 but inspite of the special strong recommendation made by the Inspector General of Uttaranchal Police (Karmik), the case of the petitioner was not considered, hence the petitioner filed writ petition in this regard for issuing direction for considering the case of the petitioner.

The petitioner has averred that inspite of direction issued by this court, the case of the petitioner has not been considered in view of the provisions made under Rule 5(1) of the Dying in Harness Rules of the State of Uttaranchal, 2002 and the case of the petitioner was rejected. Hence this writ petition.

Counter affidavit has been filed by the State denying the facts mentioned in the writ petition and it has been mentioned that the case of the petitioner does not come within the proviso 5 (1) of the Rules. It has been contended in the counter affidavit that the petitioner did not submit his application within 5 years of the death of his father, therefore, his case could not have been considered after a lapse of more than 20 years.

The petitioner has filed supplementary affidavit thereafter in which it has been stated that the mother of the petitioner made representation for the appointment on the compassionate ground on 14.04.1986 through the Superintendent of Police, Chamoli to the Superintendent of Nainital and requested to provide employment to the member of the deceased family. The copy of the application has been filed alonwith the supplementary affidavit as annexure S-2.

Heard learned counsel for the parties and perused the record.

From the perusal of the papers, it appears to me that the Inspector General of Uttaranchal Police (Karmik) vide letter dated 24.12.2001 has recommended the case of the petitioner and it has been specifically mentioned therein that the delay in moving the application be condoned under the special circumstances of this case.

The impugned order which has been annexed as annexure 9 to this writ petition, nowhere discloses that the letter recommending the case of the petitioner strongly has been considered by the respondent no. 3.

Learned counsel for the petitioner has submitted that mother of the petitioner had moved the application within 5 years of the death of her husband but the perusal of S-2 filed alongwith the supplementary affidavit shows that the submission appears to be wrong as the date which has been mentioned in the application is 14.04.1989, therefore, it cannot be said that the representation was made within a period of 5 years after the death of her husband.

Under these circumstances, the benefit of Rule 5 (1) of the Dying in Harness Rules cannot be extended to the petitioner.

However, the respondent no. 3 may take a sympathetic consideration keeping in view the special circumstances of the case. Thus I leave it on the discretion of the respondent no. 3 to consider the representation of the petitioner again in the light of the letter issued by the Inspector General of Uttaranchal

Police (Karmic) annexure 8 to this writ petition recommending the case of the petitioner strongly.

The writ petition is finally disposed of. Respondent no. 3 is directed to again decide the representation of the petitioner keeping in view the letter dated 24.12.2001 issued by the Inspector General of Uttaranchal Police (Karmik) by which the case of the petitioner has been strongly recommended. The petitioner shall file the representation within 15 days alongwith the certified copy of the judgment passed by this court and the respondent no. 3 shall decide the same within 30 days by passing speaking and reasoned order.

**(B.C. Kandpal, J.)**

23rd June, 2005
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